

county boundary line road, or of adopting a road or highway already constructed as a part or the whole of such deviation, where, in the opinion of any of the said councils, it is impracticable to construct a road along the said county boundary line, one or more of such township councils may appoint, etc. It is insisted that this has relation simply to the expenditure of money, and the arbitration has reference simply to the respective shares of money so to be expended.

I am of opinion that the words introduced by the amendment are broader than the construction contended for, and that the intention of the legislature was to afford a means, where the municipalities could not agree, to adopt a road or highway already constructed as a part of a deviation road and also of providing for its maintenance. It seems absurd to suppose that the legislature, while providing for the means of maintaining the road, should not provide for the road itself. That, I think, is manifestly implied, and I am of opinion that the arbitrators in that regard had jurisdiction to deal with the matter. Nor do I think that the fact that the road in question is half a mile from the boundary line prevents it from being adopted as a deviation road. . . .

It is worthy of note that the road in question was established more than 50 years ago by user; at first a trespass road, probably to lead to a mill, but recognized since, as in fact it is, a deviation road, offering the convenience of a deviation road, and, in the view of the arbitrators at all events, a proper deviation road.

It was not contended before me that upon the evidence the award could be attacked, nor was it asked that either party should be allowed to put in further evidence, under sec. 464 of the Act of 1903.

Township of Fitzroy v. County of Carleton, 9 O. L. R. 686, 5 O. W. R. 615, was cited as shewing that the road in question could not be a deviation road, because it did not return to the county boundary except by a side line road already opened, but, upon reference to that case, so far as it applies, I think it rather supports the award in that regard. The road in fact does return to the boundary, although by a side road already travelled.